

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA/Performance Levels
	CORRESPONDENCE SYMBOL OFAM
	DATE May 7, 2002

ADVISORY: FIELD MEMORANDUM NO. 6-02

TO: ALL REGIONAL ADMINISTRATORS

FROM: /s/ Wendy McConnell for
LENITA JACOBS-SIMMONS
Deputy Assistant Secretary

SUBJECT: Revising WIA State Negotiated Levels of Performance Due to
Unanticipated Circumstances

1. **Purpose.** To provide Regional Offices (ROs) with 1) guidance on revising state negotiated levels of performance, and 2) instructions for reporting to the National Office (NO) the outcomes of the RO review of state requests to revise negotiated levels of performance.

2. **References.** The Workforce Investment Act of 1998 (WIA), section 136; Pub. L. 105-220; 29 USC 2871; 20 CFR part 666; Training and Employment Guidance Letter (TEGL) No. 8-99, Negotiating Performance Goals, and Incentives and Sanctions Process under Title I of the Workforce Investment Act (March 3, 2000) and TEGL No. 11-01, Guidance on Revising Workforce Investment Act (WIA) State Negotiated Levels of Performance (February 12, 2002).

3. **Background.** Under section 136(b)(3)(A)(ii) of the Workforce Investment Act (WIA) of 1998, each governor submitting a state plan under Title I, subtitle B, must propose expected levels of performance for each of the 15 indicators of performance for the adult, dislocated worker and youth programs, respectively, and the two customer satisfaction indicators.

On March 3, 2000, the Employment and Training Administration issued TEGL No. 8-99 which provided guidelines for the negotiation and goal setting process that afforded states flexibility in pursuing continuous improvement for each program area. Using this guidance and related training, the ROs successfully negotiated performance levels for program years (PYs) 2000, 2001 and 2002 for all states.

RESCISSIONS	EXPIRATION DATE June 30, 2004
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Section 136(b)(3)(A)(vi) of the Act also permits the Governor to request revisions to the state negotiated levels of performance in the event “unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (iv)(II)” of section 136(b)(3)(A). These factors include economic conditions, the characteristics of participants, and the services provided to participants.

This Field Memorandum provides guidance to ROs on how to evaluate and approve requests for revisions using the state guidance provided in TEGL No. 11-01. Please note that “state staff” and “state workforce agency” are terms used in this memorandum to represent the Governor.

4. **Documenting and Reporting Results to States and the National Office.** Using the format from the attached review guide, the RO will document its research and findings and make a decision in response to a state request. A RO has 30 working days after receipt of the state’s written request to notify the state workforce agency, in writing, of the RO’s decision(s) concerning the request.

Copies of the RO’s research, findings and decision(s) must be forwarded to the NO within 10 working days after notifying the state in writing of the RO’s decision(s). Copies of the request, review findings, decisions and state notification letters should be sent to the attention of 1) Field Operations and 2) the Office of Financial and Administrative Management (OFAM) at the NO. NO staff will use this documentation to keep track of RO determinations and estimate the impact of revised levels of performance on national performance goals.

5. **Three Key Concepts Relating to State Negotiated Levels of Performance.** When reviewing proposed actions to revise one or more negotiated levels of performance, it is important to keep in mind three key concepts that distinguish state negotiated performance levels from other performance standard setting approaches.

- **State negotiated levels of performance should be viewed as aggregates.** State negotiated levels of performance should be viewed as aggregate or collective levels of performance for distinct population groups. These population groups may be defined in a number of ways, including: the types of services received, boundaries for specific labor market conditions, and the characteristics for those to be served.

Ideally, state negotiated levels of performance should be viewed as collective levels of local workforce investment board (local board) negotiated performance levels and statewide project performance goals. Similarly, local board negotiated levels of performance should be viewed as collective levels of performance goals

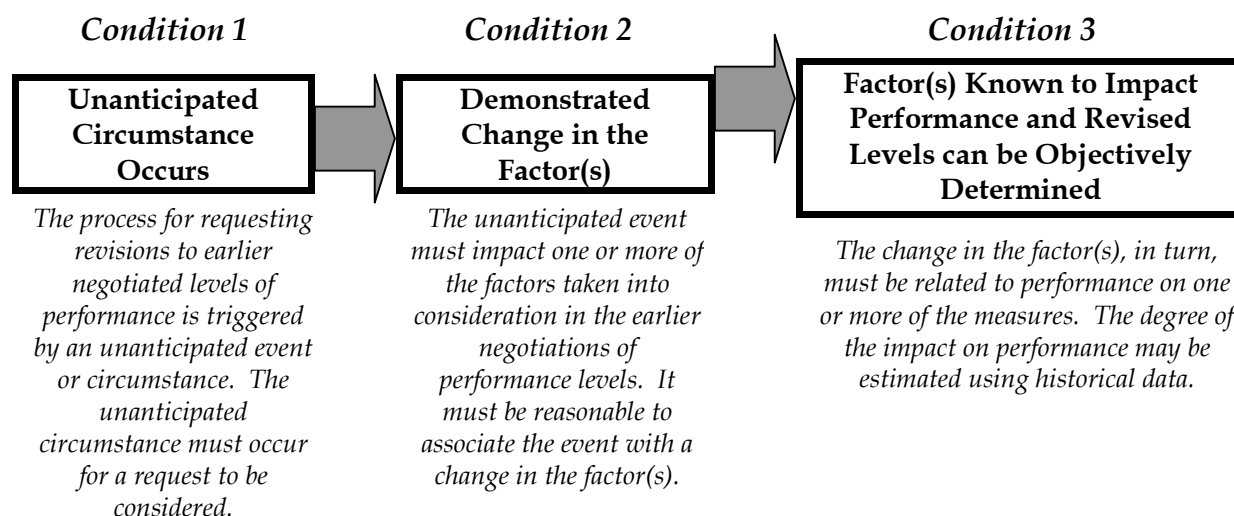
set for various population groups, service strategies, and environmental conditions.

- State negotiated levels of performance are future-oriented. Negotiated levels of performance should also be viewed as projections of desired future outcomes in light of emerging changes in the labor market, expected characteristics of participants, and service objectives. Revisions to state negotiated levels of performance should be viewed as a prospective effort to refine current program year goals before the end of the current PY or performance goals for future PYs.
- State negotiated levels of performance should be challenging. State negotiated levels of performance should be seen as stretching or challenging a state in some area of its work or performance. Similarly, any revised performance expectation should reflect a level of performance the state should ideally be attaining given the change in the environment and any needed changes to the delivery of services.

6. **Minimum Conditions to be Met.** Section 136(b)(3)(A)(vi) of the Act specifies that a governor may request revisions to state negotiated levels of performance in the event “unanticipated circumstances arise in a state resulting in a significant change in the factors.” These factors are widely accepted variables known to impact resulting outcomes on one or more of the 17 WIA performance measures.

With the above in mind, three conditions must be met before revising a negotiated level of performance. These conditions are graphically displayed in a cause and effect relationship model displayed below. Each of these conditions is discussed in more detail in this paper.

Cause and Effect Relationship Model



7. **Satisfying the Conditions.** As stated earlier, three conditions must be satisfied before a RO can revise one or more state negotiated levels of performance.

Condition 1: Unanticipated Circumstances

The proposed action to revise one or more negotiated levels of performance must articulate an unanticipated circumstance. Because each unanticipated circumstance is likely to be unique in nature, ETA chose to define “unanticipated circumstance” broadly. Simply stated, unanticipated circumstances are those that are beyond the control of the state workforce agency.

The timing of the unanticipated circumstance and its actual or projected duration will help determine the performance measures and program years impacted by the circumstance. An unanticipated circumstance may impact multiple performance measures covering multiple program years.

Several unanticipated circumstances for which variations from one or more negotiated levels of performance levels for a state may result are listed below. Please note the list of unanticipated circumstances below is not exhaustive. The list does, however, provide examples of unique events that may impact performance over which a state workforce agency has no control. Examples include:

- Limitations in the baseline data used to project performance levels for PYs 2001 and 2002. The baseline data used in the initial negotiations of these performance levels were based on actual and estimated outcomes attained by former Job Training Partnership Act (JTPA) participants. The data sources and collection methods, the services these participants received under JTPA, and the goals of these services may be very different than those found under WIA, warranting possible corrections to baseline data.
- Changes in the characteristics of program participants, such as the proportion of hard-to-serve customer groups, not taken into account in the earlier negotiation(s) on state levels of performance.
- Changes in economic conditions, such as plant openings, plant closings and shifts in the unemployment rate.
- Changes in economic assumptions and outlooks.
- Disasters, such as floods, earthquakes, hurricanes, tornadoes, and acts of war.
- Significant changes in federal funds allotted to the state to implement WIA.

- Unanticipated legal and political constraints that increase the quality of participant outcomes and, as a result, increase the level of effort needed by participants to attain these outcomes. For example, a state legislature may impose higher standards for high school graduation. This action would increase the standard needed to attain a diploma or equivalent and likely decrease the numbers graduating.

Condition 2: Demonstrated Change in the Factor(s)

The request must demonstrate evidence of change in one or more factor values. A “factor value” is an aggregate number representing the magnitude or quantity of a specific factor considered in the negotiation of performance levels. Examples of these factors include: an annual unemployment rate of 5.4%, a baseline adult entered employment rate of 72%, or 53% of the adult participants demonstrating one or more significant barriers to employment.

It must be reasonable to associate a change in a factor value with the unanticipated circumstance. The unanticipated change in a factor must be significantly large enough to impact performance on one or more of the performance measures. The change in a factor value is determined by comparing the value for the factor at the time of the original negotiation to the actual or estimated value for the factor at the time of the request for a revision to a negotiated level of performance.

Condition 3: Factor(s) Known to Impact Performance and Revised Levels can be Objectively Determined

In order to provide broad flexibility in developing procedures to fully account for state conditions, ETA chose not to establish specific numerical guidelines within which negotiated levels of performance might be revised. Instead, we set descriptive parameters to ensure credible methods and data sources are used to determine revised state negotiated levels of performance. Please note that ROs should take into account ETA policy direction for any performance measure and negotiated level of performance that is being considered for revision.

Listed below are ETA’s guidelines for approaches and data sources. The following items must be met:

- The methods used to determine revisions to negotiated levels must:
 - Adhere to widely accepted statistical practices, including predictive or forecasting techniques where appropriate.

- Demonstrate a reasonable cause-and-effect relationship between one or more factors and expected performance on a measure.
- Be fair and objective, and yield quantifiable results.
- Support, and not undermine, state efforts in achieving continuous improvement of workforce investment activities.
- The source data must be:
 - Of public use quality. That is, the data were edited and validated by data collection staff before statistical tabulations and data summaries are prepared from the data. Examples include data developed by a federal, state or local governmental agency, or some other reputable source, for example, a state's MIS unit, a university, or a private research foundation.
 - Gathered according to acceptable data collection techniques.
 - Compiled according to widely accepted analytical procedures.
- The factors used to determine revisions to negotiated levels of performance include, but are not limited to, the following:
 - Differences in economic conditions.
 - The characteristics of participants at the time of registration.
 - Services to be provided to participants.

8. **The Importance of Negotiation in Revising State Levels of Performance.**

Deriving revised levels of performance from predictive statistical models is expected to be the preferred approach by many states. These models are used to predict impacts on outcome variables based upon their demonstrated associations with various causal factors. Predictive models assume the same underlying causal laws will continue to hold for the future, but this may not always be the case. Consequently, the use of statistical models should be viewed as a starting point in determining revised levels of performance.

The RO and state staff should reach agreement on the forecasted factor values applied in the models to be used in deriving proposed revised levels of performance as well as the resulting revised levels of performance. Under certain circumstances, the statistical

models may yield levels of performance that are unrealistic. Imprecision in the statistical models, extreme factor values, and the occurrence of rare, isolated economic changes (such as those due to natural disasters) are examples of conditions that may yield unrealistically high or low levels of performance when using these models. In these and similar situations, the proposed revised levels of performance should be negotiated between the RO and state staff to ensure challenging, appropriate levels are set.

In the absence of representative statistical models, the weighted average approach should be used to propose revisions to state negotiated levels of performance. This approach was discussed in TEGL No. 11-01, Attachment II. When using this approach, the RO and state staff should reach agreement on a performance level for each target group for a specific measure identified as being impacted by the unanticipated circumstance. The negotiated level for a target group is an outcome considered to be exemplary performance given the circumstances affecting the performance of individuals in the target group. The expectation for a target group may be derived from state experience with similar unanticipated circumstances or suggested by research studies.

The negotiated level for a target group should not be based solely on the past performance of similar population groups that experienced similar circumstances. The negotiated outcome for a target group should reflect the level of performance the target group should ideally be attaining given the change in the environment and any needed changes to the delivery of services.

9. **The Process for Making Revisions.** ETA's process for making revisions to performance levels includes the following broad steps.

- a) **The Request.** Each Governor seeking a revision will develop and submit a written request to the RO serving the state. These written requests to revise state negotiated levels of performance must be submitted to the appropriate RO before the end of the program year affected by the request. Requests to revise negotiated levels for past program years will not be considered.
- b) **Collection of Additional Information.** The RO will ascertain if additional information is needed to determine if the three conditions outlined in this paper are satisfied by the request or proposed action. If additional data are needed, the RO may request the Governor or designated staff to provide the needed data. In such a case, the RO should encourage state staff to provide the necessary information in order to ensure that the RO can fully evaluate and process the state's request or proposed action.
- c) **Review of the Request and Reaching Agreement.** In order to be approved by the RO, the request must satisfy the three conditions summarized below. The

attached guide should be used during the review. It provides research questions to use to determine and document decisions regarding the state's request or proposed action.

- i) Condition 1. The request for revision must articulate a circumstance that was unanticipated.
- ii) Condition 2. The unanticipated circumstance, in turn, must demonstrate evidence of change in one or more of the factor values taken into consideration in the earlier negotiations of performance levels. Also, it must be reasonable to associate the unanticipated circumstance with a change in one or more of the factor values.
- iii) Condition 3. If the RO determines the stated variations from expected outcomes for measures identified will, or are likely to, result from the stated significant changes in factors, the RO will review the methodology and data sources to ensure conformity to the guidelines for credible methods and data sources discussed earlier in this memorandum.

The revised levels of performance should be negotiated between the RO and state staff to ensure that challenging levels are set as discussed earlier in this memorandum.

- d) The Decision. The RO will convey the results of the review in writing to the state workforce agency within 30 working days after receipt of the written request.

Approved revised levels will be effective on the date agreement is reached between the RO and the state workforce agency to revise one or more state negotiated levels of performance. All approved revisions will be incorporated into the State Plan through a plan modification as required by 20 CFR 661.230(b)(2). (Please note that modifications to the State Plan are subject to the same public review and comment requirements that apply to the development of the original State Plan.) In the event one or more of the revised levels is changed as a result of the public review requirement, the impacted request and decision will be reconsidered by the RO.

The RO will maintain all documentation supporting its decisions.

- e) Documentation. The RO will document its research and findings and maintain this documentation for future review. Copies of this information must be forwarded to the NO within 10 working days after notifying the state workforce agency of the RO's decision(s). Copies should be sent to Field Operations and

OFAM. The NO will use this documentation to keep track of RO determinations and estimate the impact of revised levels of performance on national performance goals.

- f) Updating Negotiated Performance Levels for Use in Enterprise Information Management System (EIMS). The NO will update EIMS data files containing the WIA negotiated levels of performance to reflect approved revised performance levels on a quarterly basis. These data files are used in preparing state, regional and national performance summaries and related analyses.

10. **Inquiries.** Questions concerning this issuance should be directed to Chris Kulick at (202) 693-3937 or ckulick@doleta.gov, or James Aaron at (202) 693-2814 or jaaron@doleta.gov.

11. **Attachment.** Researching and Documenting a Request or Proposed Action to Revise a Negotiated Level of Performance, A Review Guide.

Attachment

Researching and Documenting a Request or Proposed Action to Revise a Negotiated Level of Performance

A Review Guide

General Instructions

The questions below are addressed to the RO staff member(s) responsible for researching a request and formulating decisions for action. Questions follow each research area to assist the RO staff member(s) in researching, negotiating and summarizing findings. The questions are addressed to the RO staff member(s), and it is the responsibility of the staff member(s) to cover each area addressed to ensure a comprehensive review.

The RO should summarize findings for each review area and the resulting decision(s) and forward copies of this documentation to the National Office.

Research Area One: Describing the Unanticipated Circumstance

Objective: Provide a description of the nature of the problem or mitigating circumstance (Condition One). To be considered an “unanticipated circumstance,” the event, situation or circumstance must be unplanned at the time of the original negotiation, as described in Attachment I, section 4 to TEGL 11-01.

Item Areas to Research in Completing the Objective

- R1.1 What is the unanticipated circumstance?
- R1.2 When did the unanticipated circumstance occur?
- R1.3 What is the actual or estimated duration of the unanticipated circumstance? In other words, does the unanticipated circumstance affect a portion of a program year, a whole year or multiple program years?
- R1.4 Is the unanticipated circumstance limited to certain regions of the state or does it impact the entire state? If regional in nature, what geographic area(s) are impacted?
- R1.5 Does the unanticipated circumstance affect specific population groups differently than other groups? Does the circumstance affect all groups the same way?

R1.6 Is the circumstance unforeseen or unplanned?

R1.7 Did the unanticipated circumstance result solely from poor management or administration?

Research Area 2: Identifying the Measures and Years Impacted by the Request

Objective: Provide a description of the performance measure(s) and program year(s) affected by the request (Condition 2).

Item Areas to Research in Completing the Objective

R2.1 What performance measures are identified as being impacted by the unanticipated circumstance?

R2.2 For each performance measure identified, please list the program year(s) impacted.

R2.3 If appropriate, compare the time the unanticipated circumstance occurred and its actual or estimated duration to the measures and PYs identified. Is it reasonable to assume the unanticipated circumstance might impact the measures and PYs identified? If not, why?

Research Area 3: Describing the Factors Affected by the Unanticipated Circumstance

Objective: Provide a description of the factors impacted by the unanticipated circumstance (Condition 2 and Condition 3). The request must demonstrate evidence of change in one or more factor values. It must be reasonable to associate a change in a factor value with the unanticipated circumstance. The unanticipated change in a factor must be large enough to impact performance on one or more of the performance measures.

Item Areas to Research in Completing the Objective

R3.1 What factors are identified as being impacted by the unanticipated circumstance?

R3.2 Do the cited factors present an accurate picture of the impact of the unanticipated circumstance? Are there other factors impacted by the circumstance that are not listed? Describe. [For example, a state may cite a jump in the percentage of high school dropouts being served by the program. Did the state also investigate

whether there was a value change in easier to serve groups such as college graduates?]

- R3.3 Are the factors reasonably related to the unanticipated circumstance? That is, is it reasonable to assume the unanticipated circumstance caused a change in the values for the identified factors? Does the proposed relationship between the unanticipated circumstance and change in factors make sense?
- R3.4 For the factors to be considered in the request, describe the value for each factor at the time the initial performance levels were negotiated for the state. Describe the value for each factor at the time of the request. Compare these levels to determine the direction and the amount of change.

Research Area 4: Describing the Approaches Used to Determine Revised Levels

Objective: Provide a description of the approach(es) used to determine revised levels of state negotiated performance, the proposed revised levels for each measure identified in the request, and the actual revised levels, if appropriate. Assess the validity of the approach(es) using the guidelines for data sources and approaches. (Condition 3)

Item Areas to Research in Completing the Objective

- R4.1 How did the request determine the estimated impact on performance for the factor changes identified? In the absence of sound statistical models, the weighted average approach should be used.
- R4.2 Describe the computation methods used to determine revised levels of performance.
- R4.3 Does the approach demonstrate a reasonable cause and effect relationship between one or more factors and expected performance?
- R4.4 Is the approach objective, logical and free from bias?
- R4.5 Describe the source data. Who developed the data? Was the data gathered according to acceptable data collection techniques? Was the data compiled according to widely accepted analytical procedures? Are the data timely?
- R4.6 What changes can be feasibly made by the state to the design and delivery of services to address the impact of the unanticipated circumstance? What programmatic changes are being proposed by the state?

R4.7 Given the changes in the factors, what level of performance is estimated to occur:

- without changes to the design and delivery of services to the target group?
- with feasible changes to the design and delivery of services to address changes in the factors caused by the unanticipated circumstance?

R4.8 Given the conditions faced by the state, are the proposed revised levels of performance challenging? If not, what levels are considered challenging? Describe.

Additional Comments

If appropriate, provide additional comments about the request that may not have been addressed in earlier sections due to the unique nature of the unanticipated circumstance.

Overall Assessment

RO Decision

Describe the RO's decision regarding the request to revise one or more state negotiated levels of performance. For each measure and PY outlined in the request, please indicate whether the item was approved or disapproved. If approved, please specify the revised levels for each measure and PY.

Summary of Findings

For each measure and PY outlined in the request, use the findings from the review to address each of the three conditions a request must meet in order to be approved by the RO. Explain how the request met or failed to meet the criteria for approval based on the findings from the review.